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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
G.S. INVESTMENT COMPANY, INC.,  
dba THE CARPET EXCHANGE

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 81-44

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for a black smoke emission allegedly in violation of respondent's Regulation 1, Section 9, came on for hearing before the Pollution Control Hearings Board on December 7, 1981, at Lacey, Washington. Seated for and as the Board were David Akana and Gayle Rothrock (presiding). The respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its office manager, Jeanette Sarrasin. Respondent appeared by its attorney, Keith D. McGoffin. Reporter Lois Fairfield recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From  
2 the testimony heard and exhibits examined, the Pollution Control  
3 Hearings Board makes these

#### 4 FINDINGS OF FACT

##### 5 I

6 Pursuant to RCW 43.21B.260, respondent has filed with this Board a  
7 certified copy of its Regulation I and amendments thereto, which is  
8 noticed.

##### 9 II

10 Appellant operates a business (The Carpet Exchange) in south  
11 Seattle whose physical structure is heated by a boiler and exhausted  
12 through a brick stack. The burner unit was replaced and updated in  
13 December, 1979 after repeated smoky emissions, resulting in air  
14 pollution violations, signaled difficulty with the old oil burner.

##### 15 III

16 On December 16, 1980, appellant's boiler operated inefficiently  
17 and emitted black smoke for a period of time unbeknownst to officers  
18 and employees of G.S. Investment Company, Inc., working at that  
19 location.

##### 20 IV

21 While on routine patrol in the Duwamish industrial area,  
22 respondent's inspector saw the black smoke plume coming from  
23 appellant's brick boiler stack. He made a 23-minute observation  
24 commencing at 2:13 p.m. and recorded emission of an air contaminant  
25 for a period aggregating six minutes at smoke opacities ranging from  
26 30% to 100%. He photographed the plume then spoke with appellant's  
27

1 representative, who accepted Notice of Violation No. 17724 for the  
2 foregoing event. Respondent's agent informed appellant's  
3 representative of the existence of Section 9.16 regarding upset  
4 conditions. The appellant's representative telephoned the boiler's  
5 maintenance man requesting immediate investigation, servicing and  
6 handling of the emission problem.

7 V

8 On December 17, 1980, appellant's boiler servicing agent  
9 telephoned respondent agency to report boiler burner repairs being  
10 made and the ordering of a new part. No conclusion on a correction  
11 date for the problem was reached.

12 VI

13 On January 6, 1981, under authority of Regulation I, Section 9.16,  
14 respondent agency wrote appellant requesting a full written report on  
15 the nature and solution of the emission problem. No response came  
16 forth in the next six weeks and a Notice and Order of Civil Penalty  
17 (Number 5006) of \$250 was then issued on February 26, 1981, by  
18 respondent. The civil penalty is associated with the Regulation I,  
19 Section 9.03 black smoke emission of December 16, 1980, not with any  
20 purported violation of Section 9.16.

21 From the subject Notice of Violation and \$250 civil penalty, G.S.  
22 Investment Company, Inc., dba The Carpet Exchange, appeals.

23 VII

24 Any Conclusion of Law which should be deemed a Finding of Fact is  
25 hereby adopted as such.

26 From these Findings the Board enters these

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over the persons and the subject matter  
4 of this proceeding.

5 II

6 Appellant violated Section 9.03 of Regulation I on December 16,  
7 1980, by allowing the emission of an air contaminant in excess of  
8 three (3) minutes in any one hour. Although respondent provides a  
9 method for avoidance of violations (Section 9.16), there is  
10 uncertainty whether appellant understood the full use and exercise of  
11 such provision. While ignorance of such regulatory provisions is not  
12 sufficient cause to strike a violation, under the facts and  
13 circumstances of this matter the amount of the penalty should be  
14 reduced by suspension with conditions.

15 III

16 Any Finding of Fact which should be deemed a Conclusion of Law is  
17 hereby adopted as such.

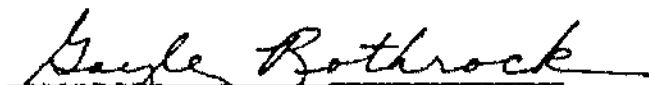
18 From these Conclusions the Board enters this  
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ORDER

Respondent's Notice of Violation No. 17724 and \$250 Notice and Order of Civil Penalty No. 5006 is affirmed. However, \$100 of the penalty is suspended provided appellant not violate respondent's regulation for a period of one year from the date of entry of this order.

DONE at Lacey, Washington this 18th day of December, 1981.

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE BOTHROCK, Vice Chairman

  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER